Office-Supreme Court, U.S.
FILED
JUL 10 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-203

In the Supreme Court of the United States

OCTOBER TERM, 1980

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.,
PETITIONER,

VS.

J. J. CURRAN AND JACQUELYN L. CURRAN,
RESPONDENTS.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

JOINT APPENDIX

DOUGLAS G. GRAHAM, *Counsel of Record*
RICHARD P. SASLOW
DENNIS K. EGAN
SEYMOUR M. NAYER
BUTZEL, KEIDAN, SIMON, MYERS & GRAHAM
Attorneys for Petitioner,
Merrill Lynch, Pierce, Fenner & Smith, Inc.
1990 First National Building
Detroit, Michigan 48226
(313) 961-7900

RENAISSANCE PRINTING COMPANY, 76 W. ADAMS
9TH FLOOR, DETROIT, MICHIGAN 48226 — (313) 964-3185

JOINT APPENDIX TABLE OF CONTENTS

PAGE

United States District Court
Relevant Docket Entries JA-1

United States Court of Appeals
Relevant Docket Entries JA-4

Complaint JA-6

Defendant's Motion to Dismiss or, in the Alternative, to Dismiss in Part and Stay Proceedings Pending Arbitration JA-23

UNITED STATES DISTRICT COURT
RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1976		
April 5	1.	Complaint, summons issued.
April 7	2.	Marshal's return.
May 24	3.	Notice of deposition upon oral examination and proof of mailing.
May 24	4.	Deft's motion to dismiss or, in the alternative, to dismiss in part and stay proceedings pending arbitration, affidavit, proof of service and notice of hearing set for June 7/76. BA
June 18	5.	Notice of hearing on deft's motion to dismiss, or in the alternative, to dismiss in part and stay proceeding pending arbitration for Sept. 13/76, with proof of service.
June 21	—	Deft's motion to dismiss adj. to Sept. 13/76.
July 14	6.	Notice of adjournment & rescheduling of deft's motion to dismiss, etc./reset for Sept 13/76
Sept 13	8.	Deposition of Lawrence McMann
Sept 22	9.	Deft's Reply memorandum in support of its motion to dismiss and to stay proceedings with affidavit and proof of service. D.D. 9/23/76
Sept 24	10.	Plfts. response to defts. reply memorandum. with attachments. D.D. 9/27
Sept 27	—	Deft's motion to dismiss heard & taken under advisement. D.D. 9/28/76 Thornton, J.

Dec 27	11.	Memorandum re motion to dismiss & stay proceedings. DD. 12/28/76
1977		
Jan 12	13.	Plfts' motion for re-hrg. &/or to amend judgment & for leave to file amended &/or supplemental complaint with proof of service, B/A & attach. DD.1/12/77
Feb 2	14.	Deft's memorandum in opposition to plfts' motion for rehrg. & for leave to file amended complaint. DD.2/2/77
Feb 15	15.	Plft's reply memorandum in support of motion for re-hrg. &/or to amend judgment & for leave to file amended &/or supplemental complaint with proof of service. DD.2/15/77
Feb 16	16.	Order denying plfts' motion for rehrg. &/or to amend judgment & for leave to filed amended & /or supplemental complaint. DD. 2/17/77 Thornton, J.
Feb 16	—	Order denying motion for re-hrg. DD. 2/17/77 Thornton, J.
Feb 23	—	Order dismissing Cts 4, 5 & 6 and staying proceedings, drafted DD.2/24 Thornton, J.
Feb 23	18	Order re dismissal of Cts 4,5, & 6; staying further proceedings DD. 2/24/77 Thornton, J.
Mar 21	20.	Plfts' petition for modification of order of 2/23/77 with proposed order attached. DD.3/21/77
Mar 23	22.	Plfts' notice of appeal re order denying plfts' motion for a rehearing (#16) DD.3/30/77

Mar 23	23.	Bond on appeal-surety- Hoops & Hudson in $250.00.DD.3/30/77
Mar 28	24.	Deft's memorandum in opposition to plfts' petition for modification of order. DD. 3/30/77
Mar 29	25.	Letter re appeal. DD.3/30/77
April 4	28.	Appellants' designation of portions of transcript & statement of issues on appeal with proof of service. DD. 4/5/77
April 18	29.	Order denying plfts' petition for modification of order. DD. 4/18/77 Thornton, J.
May 16	31.	Record on appeal — dd 5/16/77
June 22	32.	Acknowledgment from C.C.A. re record on appeal. DD. 6/23/77
1980		
June 10	33.	MANDATE from CCA affirming decision of district court in part, reversing in part and remanded for further proceedings. dd 6-10-80 (FILE RETURNED)
June 30	34.	Notice of pretrial conference for 9/22/80. DD.7/1/80
July 14	35.	Stip. & Order to stay pending consideration by the U.S. Supreme Court of deft's petition for a writ of certiorari. DD.7/15/80 Boyle, J. (IN PLACE OF JUDGE THORNTON)
1981		
May 6	36.	Order from U.S. Supreme Court allowing certiorari filed on 4/20/81. DD.5/7/81

GENERAL DOCKET
United States Court of Appeals
for the
Sixth Circuit

DATE	
1977	
5/28	*Certified Record* (1 vol. pleadings), filed; and cause docketed
6/3	Appearance of R. Saslow for appellee
6/9	Appearance of R. Hudson for appellants
7/5	Brief and appendix (25) of appellants (p-7/1)
8/5	Brief and appendix (25) of appellee (p-8/4)
8/16	Reply brief (25) of appellants (p-8/15)
1978	
1/12	Motion of appellants for leave to file a supplemental brief (m-1/11) (Motion granted JPH 1/16)
1/25	Supplemental brief (25) of appellants (m-1/23)
5/16	Motion of appellee for leave to file supplemental responsive brief (m-5/12) (Motion granted JPH 5/23)
5/23	Supplemental brief (25) of appellee (m-5/12)
1979	
1/18	Motion of appellant for adjournment of oral argument (m-1/16) (1/22/79 Motion for adjournment of oral argument is granted. It is ordered that the appeal be assigned for oral argument in the April 1979 session of the Court. Weick, J. 1/25)
4/19	Cause argued by R.A. Hudson for Appellant, by R.P. Saslow for Appellee and case submitted to the Court (Before: Lively, Engel and Phillips, JJ.)

5/12	Judgment of District Court is affirmed in part, reversed in part and remanded for further proceedings (Lively, Engel and Phillips, JJ.)
5/12	Opinion by Engel, J. (Phillips, J. filed a separate opinion, concurring in part and dissenting in part)
6/09	Mandate issued (No costs taxed)
6/09	Opinion with mandate
8/18	Notice of filing petition for certiorari 8/9/80 (Sup.Ct.No. 80-203)

1981

5/01	Certified copy of Sup. Ct. order granting certiorari 4/20/81
5/01	Copy of the above order issued to District Court

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

J.J. CURRAN and JACQUELYN L. CURRAN, individually and as trustees of the JOHN J. CURRAN LIVING TRUST and JACQUELYN L. CURRAN LIVING TRUST,
Plaintiffs,

vs. Civil No. 670683

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., a Delaware corporation,
Defendant.

COMPLAINT

NOW COME plaintiffs, J.J. CURRAN and JACQUELYN L. CURRAN, by and through their attorneys, HOOPS & HUFF, and for their Complaint against Defendant herein state as follows:

FACTS ALLEGED WITH RESPECT TO ALL COUNTS

1. Plaintiffs, J.J. CURRAN and JACQUELYN L. CURRAN, are residents of the State of Michigan and are the trustees of the John J. Curran Living Trust under an agreement dated March 2, 1972, as amended, and the Jacquelyn L. Curran Living Trust under an agreement dated March 2, 1972, as amended.

2. Defendant, MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., is a corporation organized and existing by vir-

tue of the laws of the State of Delaware and is conducting business in the State of Michigan pursuant to the authority granted to it.

3. Defendant is a member firm of the New York and American Stock Exchanges, the Chicago Mercantile Exchange, and other stock and commodity exchanges, and is engaged in the business of purchasing and selling commodities, funds and securities for and on behalf of its customers, for profit.

4. The amount in controversy, exclusive of interest and costs, exceeds $10,000.00.

5. Jurisdiction is conferred upon this Court by Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act"); by Section 22(a) of the Securities Act of 1933 (the "Securities Act"); by Sections 1331, 1332, and 1337 of Title 28 of the United States Code and by pendent jurisdiction.

6. The acts complained of herein occurred within this judicial district.

7. This action is brought within all applicable limitations periods.

8. During the period of time involved herein, the Defendant broker-dealer employed the individuals named herein, among others, in the following capacities, all of whom acted in the matters complained of herein, within the scope of their employment, and within the scope of their authority on behalf of the Defendant:

A. Lawrence McMann — Customer's account executive

B. James Owen — Manager in charge of Fisher Building office, Detroit, Michigan

C. Thomas Dougherty — Commodities specialist

D. George W. Stover — Commodities specialist

E. Jeffrey Coo — Commodities specialist in New York office.

9. Prior to March, 1973, Plaintiff J.J. Curran was utilizing the services of Manley, Bennett & MacDonald, a New York Stock Exchange Member firm, in connection with an offering of limited partnership interests in cattle (the "cattle offering") and as investment manager of the J.J. Curran Crane Company Pension Plan.

10. In March, 1973, Plaintiff J.J. Curran became interested in transferring the handling of the cattle offering from Manley, Bennett to another firm and contacted Defendant in that behalf.

11. In response to Plaintiff J.J. Curran's inquiry, Plaintiff was contacted by Lawrence McMann, Thomas Dougherty and James Owen. Said employees of Defendant informed Plaintiff during a visit to the cattle ranch and on other occasions that they did not know whether Defendant would agree to handle the cattle offering, but that the prospects for same would be greatly improved if Plaintiff would shift to Defendant the management of the pension plan and open a brokerage account or accounts with Defendant utilizing the large amount of cash which Plaintiff had invested in a savings and loan institution.

12. During the course of said visit to the cattle ranch and on other occasions, James Owen, Thomas Dougherty and Lawrence McMann, acting for and on behalf of Defendant, made the following representations to Plaintiff J.J. Curran, among others, to wit:

a. That Defendant Broker had a great deal of experience in the trading of commodities and that they did the largest amount of commodity trading of any financial concern in the United States.

b. That Defendant had a full time commodity department and Guided Account Unit thereof offering a specialized trading program in commodities for investors who lacked the necessary background to invest successfully in commodity futures, and that under such program Defendant's traders did all the work and investment decision making.

c. That Defendant Broker had the greatest expertise in commodities trading and the largest statistical commodity department in the world, and made further representations to that effect in many of its brochures and advertising.

d. That Defendant Broker would assign its most competent and experienced commodity specialists to Plaintiffs' accounts who would trade and manage Plaintiffs' accounts based upon the expert, scientific and comprehensive research conducted at and transmitted from, Defendant's New York office.

e. That in the event Plaintiff opened and maintained an account with Defendant Broker, he would have to follow each and every trading suggestion but by so doing, he would achieve a 30% to 40% profit on his money and that the majority of people maintaining commodities accounts with Defendant were making that much profit and more.

f. That because of the safeguards built into the trading system employed by Defendant, Plaintiff would not suffer large losses and in no event would he lose more than 10% of the value of the account.

g. That the Defendant Broker, through its employees, would maintain strict surveillance and supervision over Plaintiff's account and that Plaintiff would be informed of all trades prior to their oc-

currence so that he could agree to the same in accordance with the conditions governing said account under Defendant's specialized guided account trading program, and that Plaintiff would be constantly and continuously kept advised of all developments affecting his account as they occurred.

13. Based upon said representations as aforesaid, and in direct reliance thereon, Plaintiffs opened, on or about April 5, 1973, a brokerage account or accounts with Defendant for the John J. Curran Living Trust ("J.J.'s account") for the purpose of trading in commodities and deposited $100,000 therein. Thereafter, on August 20, 1973, Plaintiffs opened other brokerage accounts with Defendant for the Jacquelyn L. Curran Living Trust, and for the purpose of trading in commodities.

14. Thomas Dougherty was assigned by Defendant to handle these accounts locally in Detroit, and thereafter George Stover was in charge thereof.

15. Upon information and belief, all trading decisions in said accounts were made by commodity traders employed by Defendant in its New York office including, among others, Jeffrey Coo.

16. Defendant had and exercised such control over said accounts in that all investment decisions were made by it with complete reliance upon all of Defendant's decisions by Plaintiffs.

17. Plaintiff never initiated or suggested any trade made by Defendant in the said commodity accounts.

18. That all if not substantially all of the traders in Plaintiffs' accounts were made on margin.

19. Said representations of Defendant as aforesaid were false and fraudulent since in truth and fact the Defendant Broker:

a. Did not have the intention to and actually did not base its trading Plaintiff's accounts upon its expert, scientific and comprehensive research, but rather based upon the wilful and malicious desire and scheme on the part of Defendant to generate large commissions from a large trading volume and frequency.

b. Did not have the intention to and actually did not observe any of the aforesaid "safeguards" but traded in Plaintiff's accounts in complete disregard of the "safety margins" and technical loss limiting procedures which Plaintiffs believed would protect them from a sudden and major decline in the value of their accounts.

c. Did not inform Plaintiffs of all trades prior to their occurrence but frequently made large trades and informed Plaintiffs of their occurrence after they had occurred.

d. Did not keep Plaintiffs constantly and continuously advised of all developments affecting their accounts as they occurred.

e. In truth and fact, the Plaintiffs, after establishing accounts with the Defendant, actually lost great sums of money as a result of the reckless, negligent and improper actions of the Defendant in trading in said accounts contrary to the frequently expressed wishes of Plaintiffs and with the sole purpose of generating commissions for itself.

f. Misrepresented and failed to disclose the fact that the overwhelming majority of its customers and others customers trading in commodity futures lost money.

g. Engaged in purchasing and selling commodity futures in a volume and frequency which were excessive in view of the character of Plaintiffs accounts and their needs and objectives, purchased and sold identical commodity futures repeatedly and within short periods and switched from one investment to another of equal or inferior quality without justification other than to profit itself by earning commissions.

h. Failed to select and recommend the investments which were suitable and consistent with Plaintiffs' needs and objectives.

20. For a while some of Plaintiff's accounts were profitable, and Plaintiffs withdrew the sum of $101,007.80 therefrom in September and October of 1973. After said withdrawal Plaintiffs accounts had a value in excess of $175,000.

21. Plaintiffs were concerned about maintaining the value of their accounts and at a time or times when the account declined in value, Plaintiff J.J. Curran requested Defendant to halt trading activity and "cash out" the account in order to preserve the value that remained. Defendant failed to follow Plaintiffs instructions and through its reckless and negligent trading activities substantially diminished the value of the accounts.

22. Jeffrey Coo, one of Defendant's New York traders was known to Defendant and its other employees frequently to generate as much in commissions as the value of the various commodity accounts which he managed through "churning." In the case of Plaintiff's accounts, this was accomplished through the device of taking a large number of positions on various commodity futures then liquidating the same almost immediately.

23. In late 1973, Defendant suddenly rescinded the payment schedule being utilized to compensate its employee traders so that a smaller percentage of the total commission would go to the trader. This sudden change created great dissension among said traders together with pressure to trade with greater frequency to generate an equivalent amount of commissions regardless of the consequences to the customers.

24. In early March, 1974, as a result of imprudent and reckless trading activity by Defendant which was solely for the purpose of generating large commissions, Plaintiffs' accounts declined in value from approximately $92,000 to $45,000. At the time of said decline, Plaintiffs were in Colorado, however, Defendant made no attempt to contact Plaintiffs in Colorado although Defendant was given a toll-free number which Plaintiffs could be reached.

25. On March 4, 5 and 6, 1974, in disregard of the safeguards and loss limiting procedures allegedly employed, Defendant continued to make trades in Plaintiffs' accounts in spite of the drastic decline in the value of the accounts and despite the fact that Plaintiffs had no knowledge thereof.

26. Plaintiffs, on March 6, 1974, finally learned of the large losses suffered in their commodity accounts when they were contacted by Lawrence McMann, who did not manage said accounts, but who felt Plaintiffs should be informed of the effect of the commodity trader's activities on their accounts.

27. Plaintiffs expressed extreme chagrin upon receipt of the information concerning the decline in value of their accounts and demanded to know how such large losses could occur in view of the "safeguards" which were represented to be built into Defendant's trading system. Defendant responded that the loss occurred because Defendant could not sell or trade without Plaintiffs' prior approval despite the fact Defendant previously had never sought Plaintiffs' prior approval on any trade made for the accounts.

28. Immediately upon obtaining notice of the large decline in the account and thereafter Plaintiff J.J. Curran contacted Lawrence McMann, who was managing certain non-commodity accounts for Plaintiff and requested that all trading in the commodity accounts be discontinued and Plaintiffs be "cashed out" in order to preserve the remaining value in the accounts. Lawrence McMann promptly related Plaintiffs' requests to George Stover, who was managing Plaintiffs' commodity accounts and who advised McMann that he would not close the accounts because of the large commissions being generated, and further that such action was not in accordance with Defendant's specialized guided account trading program. On each such occasion, Stover and McMann called Plaintiff and convinced him to permit trading to continue on the representations that the situation would improve and that under the "specialized guided account trading program", Plaintiffs were obligated to continue following Defendant's trading suggestions and activities in their accounts.

29. On another occasion as losses continued to be suffered, Plaintiff J.J. Curran contacted Stover directly and demanded that the commodity accounts be "cashed out." Stover declined to follow Plaintiff's instructions and called back with McMann to convince Plaintiff to allow trading to continue by making the representation that any losses would be recouped.

30. Despite repeated requests by Plaintiff that the accounts be cashed out, Defendant was reluctant to do so because of the fact that the commissions derived therefrom constituted a significant percentage of all commissions generated in the office.

31. At the time that the representations set forth hereinabove were made and during the course of the period that Plaintiffs maintained commodity accounts with Defendant, Plaintiffs did not know nor have any reasonable basis to know that the said representations were false, but believed and relied upon said representations as being true.

32. As a result of all of the foregoing representations, Plaintiffs were induced to establish commodities accounts with Defendant, which Plaintiffs continued to maintain until they discovered the false, fraudulent and deceitful nature of the representations as set forth herein and at that time, in April, 1974, Plaintiffs insisted the accounts be cashed out.

COUNT I

33. Defendant breached the agreement between the parties requiring it to observe certain safeguards and stop-loss limits as set forth hereinabove.

34. In addition, Defendant breached the agreement between the parties by failing to follow on several occasions Plaintiffs' instructions that the accounts be cashed out.

35. As a direct and proximate result of said breaches, the value of Plaintiff's accounts were severely reduced, thereby resulting in damage to Plaintiffs in the sum of $85,000.00

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendant in the sum of $85,000.00, together with interest, costs and their reasonable attorneys fees.

COUNT II

36. In managing Plaintiffs' accounts, Defendant, and specifically, without limitation, its employees, Dougherty, Stover, Coo and Owen, were negligent in the following particulars among others, to wit:

a. Defendant failed to employ the technical loss limiting procedures agreed upon between the parties, which such loss limiting procedures would have been employed by an ordinarily prudent commodities executive;

b. Defendant, and especially Jeffrey Coo, instituted and maintained in Plaintiffs' accounts unusually, grossly and imprudently overextended positions in numerous commodities;

c. Defendant failed to employ a scientific and comprehensive investment plan with respect to Plaintiffs' accounts and instead engaged in reckless and haphazard trading with the sole intention of generating large commissions;

d. Defendant failed to exercise supervision over its employees to restrain them from engaging in excessive and reckless trading activities and instead by virtue of its alteration of the trader's compensation schedule and otherwise encouraged the excessive trading as a means of generating large commissions and profits;

e. Defendant failed to consult with Plaintiffs as to the quality of the positions assumed, decisions and events affecting their accounts;

f. Defendant generally failed in other respects to manage and handle the accounts in a skillful, prudent, reasonable and professional manner.

g. Defendant failed and refused to cash out Plaintiffs' accounts when requested to do so.

37. By virtue of the reckless and negligent acts of Defendant and its employees all as set forth hereinabove, Plaintiffs suffered damage in the sum of $175,000.00 in decline in value of the accounts and $44,566.00 in commissions paid to Defendant.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendant in the sum of $219,566.00, together with interest, costs and their reasonable attorneys fees.

COUNT III

38. By virtue of the relationship of Plaintiffs and Defendant, Defendant assumed and occupied fiduciary position of trust and confidence and thereby owed to Plaintiffs the duties of loyalty, fairness, due care and good faith.

39. Defendant, by virtue of its actions and misrepresentations as set forth hereinabove, breached said duty to Plaintiff's damage in the sum of $175,000.00 in decline in value of the accounts and $44,566.00 in commissions paid to Defendant.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendant in the sum of $219,566.00, together with interest, costs and their reasonable attorneys fees.

COUNT IV

40. Defendant, through the use of means or instrumentalities of interstate commerce, and the mails, made an offer and sale of an investment contract and/or contracts to Plaintiffs without the filing of a registration statement as required by the Securities Act.

41. Accordingly, said offer and sale of an investment contract and/or contracts was made in violation of Sections 5 and 12(2) of the Securities Act.

42. The consideration paid by Plaintiffs for said investment contract and/or contracts was $194,566.00, of which Plaintiffs have recovered approximately $109,000.00.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendant in the sum of $85,000.00, together with interest, cost and their reasonable attorneys fees.

COUNT V

43. In connection with the offer and sale of the aforesaid investment contract, and/or contracts, securities and commodity futures involved herein, Defendant, directly and indirectly, by the use of means or instrumentalities of interstate commerce, and the mails, made untrue statements of material facts, and omitted to state material facts to Plaintiffs necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, all as set forth hereinabove.

44. Said misrepresentations, untrue statements of material facts and omissions of material facts operated as a fraud and deceit upon Plaintiffs and were in violation of Rule 10b-5 promulgated under the Exchange Act and Section 15(c)(1) thereof, Section 17(a) of the Securities Act, Section 6 of the Commodity Exchange Act, Section 410(a)(2) of the Michigan Uniform Securities Act and rules and regulations of the National Association of Securities Dealers, the New York Stock Exchange, the Chicago Mercantile Exchange, and common law, and damaged Plaintiffs in the sum of $175,000.00 in decline in the value of the accounts and $44,566.00 in commissions paid to Defendant.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendant in the sum of $219,566.00, together with interest, costs and their reasonable attorneys fees.

COUNT VI

45. In connection with the offer and sale of the investment contract, securities and commodity futures involved herein, Defendant, directly and indirectly, by the use of means or instrumentalities of interstate commerce, and the mails, employed a device, scheme and artifice, and engaged in acts,

practices and a course of dealing which operated as a fraud upon Plaintiffs all as set forth hereinabove.

46. Said devices, schemes, artifices, acts, practices and course of dealing operated as a fraud and deceit upon Plaintiffs and were in violation of Rule 10b-5 promulgated under the Exchange Act and Section 15(c)(1) thereof, Section 17(a) of the Securities Act, Section 6 of the Commodity Exchange Act, Section 410(a)(2) of the Michigan Uniform Securities Act and rules and regulations of the National Association of Securities Dealers, the New York Stock Exchange, the Chicago Mercantile Exchange, and common law, and damaged Plaintiffs in the sum of $175,000.00 in decline in the value of the accounts and $44,566.00 in commissions paid to Defendant.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendant in the sum of $219,566.00, together with interest, costs and their reasonable attorneys fees.

COUNT VII

47. Said misrepresentations, omissions and nondisclosures of material facts as set forth hereinabove were made intentionally by Defendant and its employees with knowledge of their falsity, for the purpose of deceiving Plaintiffs and with the intent that Plaintiffs rely thereon.

48. Plaintiffs relied upon such misrepresentations, omissions and nondisclosures to their detriment and have been injured as a direct and proximate consequence thereof in the sum of $175,000.00 in decline in the value of the accounts and $44,566.00 in commissions paid to Defendant.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendant in the sum of $219,566.00, together with interest, costs and their reasonable attorneys fees.

COUNT VIII

49. Said misrepresentations, omissions and nondisclosures of material facts as set forth hereinabove were made at a time when Defendant knew, or should have known, of their falsity.

50. By failing to make full disclosure of such material facts and by making said misrepresentations, Defendant acted with negligent and/or reckless disregard of its duties to Plaintiff, to Plaintiff's damage in the sum of $175,000.00 in decline in the value of the accounts and $44,566.00 in commissions paid to Defendant.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendant in the sum of $219,566.00, together with interest, costs and their reasonable attorneys fees.

COUNT IX

51. By virtue of the wilful, wanton, intentional and reckless acts of Defendant as set forth hereinabove, Plaintiffs are entitled to punitive and/or exemplary damages from Defendant in the amount of $500,000.00.

WHEREAS, Plaintiffs pray that this Court enter judgment in their favor and against Defendant in the sum of $500,000.00.

HOOPS & HUFF

By: (s) David J. Huff

and (s) Robert A. Hudson
Attorneys for Plaintiffs
2460 Guardian Building
Detroit, Michigan 48226
964-2150

Dated: April 5, 1976

DEMAND FOR JURY TRIAL

NOW COME Plaintiffs, J.J. CURRAN and JACQUELYN CURRAN, by and through their attorneys, HOOPS & HUFF, and make demand for trial by jury of the within cause.

HOOPS & HUFF

By: (s) David J. Huff

and (s) Robert A. Hudson
Attorneys for Plaintiffs
2460 Guardian Building
Detroit, Michigan 48226
964-2150

Dated: April 5, 1976

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action File No. 670683

J.J. CURRAN and JACQUELYN L. CURRAN, individually and as trustees of the JOHN J. CURRAN LIVING TRUST and JACQUELYN L. CURRAN LIVING TRUST,

Plaintiff

v. SUMMONS

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., a Delaware corporation

Defendant

To the above named Defendant: MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.

You are hereby summoned and required to serve upon David J. Huff and Robert A. Hudson of the law firm of Hoops & Huff plaintiff's attorney, whose address is 2460 Guardian Building, Detroit, Michigan

an answer to the complaint which is herewith served upon you, within 20 days afater service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

HENRY R. HANSSEN
Clerk of Court.

MARILYN OREM
Deputy Clerk.

Date: April 5, 1976 [Seal of Court]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

J.J. CURRAN and JACQUELYN L. CURRAN, Individually and as Trustees of the John J. Curran Living Trust and Jacquelyn L. Curran Living Trust,
Plaintiffs,

vs.

Civil Action
No. 670 683

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., a Delaware corporation,
Defendants.

DEFENDANT'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO DISMISS IN PART AND STAY PROCEEDINGS PENDING ARBITRATION

Defendant, by its attorneys, Butzel, Levin, Winston & Quint, moves as follows:

1. That this action be dismissed pursuant to Rule 12(b)(6) Fed.R.Civ.P., for the reason that the limitation period agreed upon in writing by the parties expired prior to filing of the Complaint, or

2. That, in the alternative, the Court dismiss, pursuant to Rule 12(b)(6) Fed.R.Civ.P., those allegations of the Complaint purporting to state claims under the Securities Act of 1933 and the Securities Exchange Act of 1934, to wit: Counts IV, V and VI of the Complaint, and

3. Stay proceedings of the remaining claims pending arbitration, pursuant to the written agreement of the parties and the Federal Arbitration Act, 9 U.S.C. §3.

BUTZEL, LEVIN, WINSTON & QUINT

(s) DOUGLAS G. GRAHAM (P14252)

(s) RICHARD P. SASLOW (P23865)

Attorneys for Defendant
1990 First National Building
Detroit, Michigan 48226
961-7900

Dated: May 24, 1976